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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,956	12/31/2003	Alan John Slesinski	F6180(V)	8587
201 7590 11/15/2007 UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100			EXAMINER STULII, VERA	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 11/15/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/749,956	Applicant(s) SLESINSKI ET AL.	
	Examiner Vera Stulii	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/04/2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-20 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-20 and 22-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claim 13 refers to preceded canceled claim 11. Claim 22 refers to preceded canceled claim 21. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-10 and 12-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant has disclosed the range of 2-15%, 8-14%, 10-12% and 3-8% percent added non-peanut protein (see p. 5 top paragraph of Specification and original claims 11-12). Amended claim 1 now recites the range of 3 to 15 % added non-peanut protein. However, no criticality has been established to 3 and 15 % with regard to the range end points. For purposes of examination the claimed will be construed as 3 to 15% of added non-peanut protein.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-10, 12-20 and 22-25 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Billerbeck et al (US 4,000,322) in view of Sevenants et al (US H0001636).

In regard to newly added limitation of claim 1, Applicant is referred to previous Office action (page 5) and to the rejection under 35 U.S.C. 112, first paragraph as cited above.

Response to Arguments

Applicants' arguments filed 9/4/2007 have been fully considered but they are not persuasive.

On page 7 of the Remarks, Applicants state that "The Office points to no teaching by Billerbeck et al. of a nut spread having 3.5 grams or less of total adjusted carbohydrate per table serving and from 3 to 15% of added non-peanut protein". In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding Applicants' argument that " illustrative sweetening agents given include corn syrup, sweetose, liquid sugar, maple syrup, etc " (p. 7 of the Remarks) it is

noted that Billerbeck et al do not limit sweetening agents to corn syrup, sweetose, liquid sugar, maple syrup. Billerbeck et al disclose that "[o]ther sweetening agents which may be employed are naturally occurring, naturally derived or synthetic groups" (i.e not naturally occurring or not naturally derived). These syrups may be used in place of honey and employed in the subject process in substantially the same manner as the honey" (Col. 2 lines 59-63). As stated in the previous Office action, it is noted that high intensity sweetener is a synthetic sweetener.

On page 8 of the Remarks Applicants state that:

The focus of Sevenants et al. is clearly a low fat spread. Although Sevenants et al. do speak of the possibility of adding protein, other than peanut protein, to their spread, the Office points to no teaching of a spread having the parameters recited in the present claims. Again, while Billerbeck et al. may add protein, they do so to lower fat, and the Office points to no explicit teaching of lowering of carbohydrates.

Examiner respectfully disagrees. As stated in the previous Office action, Billerbeck et al disclose that synthetic sweeteners may be used in place of honey. Thus Billerbeck discloses reduction of caloric value of a nut-butter spread. To further reduce the caloric value of the a nut butter spread, one of ordinary skill in the art would have been motivated to substitute fat components of peanut butter with a lower-fat or non-fat components. As stated in the previous Office action, Sevenants et al disclose that "[i]n order to lower the fat content and maintain protein levels in the spread, non-fat containing solids are used" (Col.3 lines 11-12). Sevenants et al disclose protein supplements such as additional peanut solids, soy flour, soy concentrate, soy isolate as a non-fat containing solids are used (Col. 3 lines 18-20). Sevenants et al also disclose

that soy protein can be added to fortify this low-fat product with protein materials (Col. 4 lines 59-61). Further regarding reduction of caloric value, Sevenants et al disclose that "[t]he amount of artificial sweetener used would be that effective to produce the sweetness that is desired; and would be about the equivalent of the addition of from about 1% to 7% of sucrose. Usually from about 0.001% to about 2% artificial sweetener is used". Sevenants et al disclose use of high intensity sweeteners such as aspartame and acesulfame (Col. 4 lines 33-35). Since childhood obesity (and obesity in general) remains a widely-acknowledge problem, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify disclosure of Billerbeck et al and to further reduce caloric value of a nut spread.

Again, as stated in the previous Office action, since Sevenants et al disclose a reduced fat peanut butter or spread comprising from about 40 to about 70 wt. % peanut solids, from about 30 to about 60 wt. % peanut oils, from about 15 to about 50 wt. % non-peanut solids, and Billerbeck discloses a peanut butter composition comprising from 60 to 92 wt. % of peanuts and from 36 to 70 wt. % peanut/vegetable oils, one of the ordinary skill in the art would have been motivated to modify disclosure of Billerbeck et al and add non-peanut solids such as soy protein as taught by Sevenants et al. One of the ordinary skill on the art would have been motivated to do so in order to reduce fat content and to fortify the composition as taught by Sevenants et al. It would also have been obvious to vary amounts of added proteins in order to achieve desired level of fats in the final composition as taught by Sevenants et al. Since Billerbeck et al disclose that the sweetening agent such as honey is used to provide a final concentration of at least

5 wt. % and the fact that synthetic sweeteners may be used in place of honey, and Sevenants et al disclose that usually from about 0.001 to about 2% artificial sweetener is used as the equivalent of the addition of from about 1 to 7% of sucrose, one of the ordinary skill in the art would have been motivated to use from about 0.001 to about 2% of high intensity sweetener instead of honey as taught by Billerbeck et al and Sevenants et al. One of the ordinary skill in the art would also have been motivated to do so to reduce caloric value of the final composition. Thus it would have been obvious to modify disclosure of Billerbeck et al and to add soy protein to the nut spread composition. Then the final product would have a peanut content of from about 60 to 92 wt. %, the added oil content of from 6 to 24 weight percent, the high intensity sweetener content of from about 0.001% to about 2wt.%, and the soy protein content of from about 15% to about 50%. Therefore the final composition would inherently have a total adjusted carbohydrate content as claimed.

Further in this regard, it is noted that although the references do not specifically disclose every possible quantification or characteristic of its product, including total adjusted carbohydrate content, the total adjusted carbohydrate content would have been expected to be in the claimed range absent any clear and convincing evidence and/or arguments to the contrary. The references disclose the same starting materials and methods as instantly (both broadly and more specifically) claimed, and thus one of ordinary skill in the art would recognize that the total adjusted carbohydrate content, among many other characteristics of the referenced product, would have been an inherent result of the product disclosed therein. The Patent Office does not possess the

facilities to make and test the referenced product, and as reasonable reading of the teachings of the references has been applied to establish the case of obviousness, the burden thus shifts to applicant to demonstrate otherwise.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VS


KEITH D. HENDRICKS
SUPERVISORY PATENT EXAMINER